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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/760,648

01/20/2004

Fred P. Smith

3339.2.1

1015

28049

7590

08/29/2006

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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/760,648	<b>Applicant(s)</b> SMITH, FRED P.	
	<b>Examiner</b> James Keenan	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 and 11, the recitation "pulling ... during backing of the vehicle" appears to require a method step or operation to be performed, which is indefinite in an apparatus claim. The scope of these claims is therefore unclear in that the metes and bounds of the invention can not be determined.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 9, 11, and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Safko (US 5,184,931).

Safko shows a pickup truck having a bed in which is placed a flexible cargo carrying member 5 having portions 3, 4 extending therefrom such that in use they are placed under the rear wheels of the vehicle and captured thereby so that as the vehicle is backed up the member 5 is drawn rearwardly to discharge cargo in the bed.

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Although claims 1 and 11 have been amended in an attempt to overcome the rejection, it is noted that not only do the straps 3, 4 read on the claims even as amended (i.e., the first portion of the straps in the bed "underlie cargo", as broadly claimed, and is pulled around the rear end of the vehicle by the second portion placed under the wheels), but Safko discloses an alternative embodiment where the member 5 is replaced by a simple mat (col. 2, lines 6-8), which clearly would meet the newly added limitation.

Re claims 2, etc., the rear bumper of the vehicle is considered a "friction reducing member", as broadly claimed, which would inherently be made of wood, metal, or some type of plastic polymer, elastomer, or composite.

Re claim 9, the flexible member is made from canvas, which is a fiber.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko.

Although Safko does not disclose the friction reducing member as being made from polyethylenes or fluoropolymers, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Safko such

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that the friction reducing member was made from one of these materials, as it has been held that selecting a known material on the basis of its suitability for the intended use is an obvious matter of design choice.

Re claim 19, although the belt portions are used to form a tailgate (figure 3) rather than being placed over the load prior to moving the vehicle, doing so would be within the skill level of an ordinary worker in the art, as it is well known to cover a load, particularly bulk materials, when transporting for safety and security reasons.

7. Claims 7, 8, 10, 12-15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko in view of Kellogg (US 3,900,118).

The friction reducing member of Safko is not a roller.

Kellogg shows a pickup truck wherein a roller is attached to the tailgate thereof to reduce friction when materials are loaded or unloaded to or from the bed.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Safko with a roller, as suggested by Kellogg, as this would improve the unloading operation.

Re claim 8, note that the roller comprises multiple sections 56, 58.

Re claim 10, again, the selection of a known material on the basis of its suitability for the intended use is an obvious matter of design choice.

Re claim 20, although applicant argues that Safko teaches removing the tailgate and thus no motivation exists for using the tailgate of Kellogg, it is important to point out that the only reason Safko removes the tailgate is because the replacement cargo

carrier 5 is longer than the original bed. It is also important to note that Safko still uses a tailgate, it is just not the original one. Thus, in the embodiment where a mat (which presumably would fit within the confines of the original cargo bed) rather than the cargo carrier 5 is used, use of the original tailgate would clearly be desirable. Kellogg simply shows that a tailgate with a roller attached thereto is a well known and art recognized means of assisting in loading of a truck bed and thus provides the motivation for modifying the apparatus of Safko.

8. Applicant's arguments filed 6/22/06 have been fully considered but they are not persuasive. These arguments have been addressed above.

9. Applicant's arguments with respect to claim 20 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

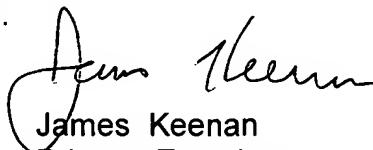
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
8/22/06